

AMENDED IN SENATE AUGUST 21, 2014

AMENDED IN SENATE JUNE 24, 2014

AMENDED IN ASSEMBLY MAY 15, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1795

Introduced by Assembly Member Alejo

February 18, 2014

An act to amend Sections 1770 and 36512 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1795, as amended, Alejo. Cities: city council: vacancy.

Existing law provides that an office becomes vacant upon the happening of, among other things, the resignation of the person from office before the expiration of the term.

This bill would provide that, in the case of the office of city council member, the office becomes vacant ~~upon the delivery of~~ *pursuant to* a letter of resignation ~~by~~ *from* the resigning council member to the city clerk.

Existing law requires a city council, within 60 days of a vacancy in an elective office, to fill that vacancy by appointment or call a special election to fill the vacancy, as specified.

This bill would authorize a resigning city council member to cast a vote on the appointment of his or her successor if the resignation will go into effect upon the appointment of the successor, subject to specified conditions, where the vacancy occurs on the city council of a city that elects city council members by or from districts and the city council has elected to fill the vacancy by appointment.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1770 of the Government Code is amended
2 to read:
3 1770. An office becomes vacant on the happening of any of
4 the following events before the expiration of the term:
5 (a) The death of the incumbent.
6 (b) An adjudication pursuant to a quo warranto proceeding
7 declaring that the incumbent is physically or mentally incapacitated
8 due to disease, illness, or accident, and that there is reasonable
9 cause to believe that the incumbent will not be able to perform the
10 duties of his or her office for the remainder of his or her term. This
11 subdivision shall not apply to offices created by the California
12 Constitution nor to federal or state legislators.
13 (c) (1) His or her resignation, except as provided in paragraph
14 (2).
15 (2) In the case of the office of city council member, upon the
16 delivery of a letter of resignation by the resigning council member
17 to the city clerk. *The letter of resignation may specify a date on*
18 *which the resignation will become effective.*
19 (d) His or her removal from office.
20 (e) His or her ceasing to be an inhabitant of the state, or if the
21 office be local and one for which local residence is required by
22 law, of the district, county, or city for which the officer was chosen
23 or appointed, or within which the duties of his or her office are
24 required to be discharged.
25 (f) His or her absence from the state without the permission
26 required by law beyond the period allowed by law.
27 (g) His or her ceasing to discharge the duties of his or her office
28 for the period of three consecutive months, except when prevented
29 by sickness, or when absent from the state with the permission
30 required by law.
31 (h) His or her conviction of a felony or of any offense involving
32 a violation of his or her official duties. An officer shall be deemed
33 to have been convicted under this subdivision when trial court
34 judgment is entered. For purposes of this subdivision, “trial court
35 judgment” means a judgment by the trial court either sentencing

1 the officer or otherwise upholding and implementing the plea,
2 verdict, or finding.

3 (i) His or her refusal or neglect to file his or her required oath
4 or bond within the time prescribed.

5 (j) The decision of a competent tribunal declaring void his or
6 her election or appointment.

7 (k) The making of an order vacating his or her office or declaring
8 the office vacant when the officer fails to furnish an additional or
9 supplemental bond.

10 (l) His or her commitment to a hospital or sanitarium by a court
11 of competent jurisdiction as a drug addict, dipsomaniac, inebriate,
12 or stimulant addict; but in that event the office shall not be deemed
13 vacant until the order of commitment has become final.

14 (m) (1) The incumbent is listed in the Excluded Parties List
15 System and all of the following subparagraphs apply:

16 (A) The office is one that the incumbent holds ex officio, by
17 virtue of holding another office, or as an appointee.

18 (B) The appointed or ex officio office is on the governing board
19 of a local agency that is, or may reasonably be expected to be, a
20 participant or principal in a covered transaction, pursuant to federal
21 law.

22 (C) A federal agency head or designee has not granted the
23 incumbent an exception, in writing, permitting the incumbent to
24 participate in a particular covered transaction in which the local
25 agency is, or may reasonably be expected to be, a participant or
26 principal.

27 (2) For purposes of this subdivision, the following terms have
28 the following meanings:

29 (A) "Excluded Parties List System" means the list maintained
30 and disseminated by the federal General Services Administration
31 containing names of, and other information about, persons who
32 are debarred, suspended, disqualified, or otherwise excluded from
33 participating in a covered transaction, pursuant to federal law.

34 (B) "Local agency" includes, but is not limited to, a county,
35 whether general law or chartered, city, whether general law or
36 chartered, city and county, school district, municipal corporation,
37 district, political subdivision, or any board, commission, or agency
38 of one of these entities.

39 (C) "Federal law" includes, but is not limited to, federal
40 regulations adopted pursuant to Section 2455 of Public Law

1 103-355 (108 Stat. 3327), Executive Order No. 11738, Executive
2 Order No. 12549, and Executive Order No. 12689.

3 (3) This subdivision shall not apply to an elective office.

4 SEC. 2. Section 36512 of the Government Code is amended
5 to read:

6 36512. (a) If a vacancy occurs in an appointive office provided
7 for in this chapter, the council shall fill the vacancy by
8 appointment. A person appointed to fill a vacancy holds office for
9 the unexpired term of the former incumbent.

10 (b) If a vacancy occurs in an elective office provided for in this
11 chapter, the council shall, within 60 days from the commencement
12 of the vacancy, either fill the vacancy by appointment or call a
13 special election to fill the vacancy. The special election shall be
14 held on the next regularly established election date not less than
15 114 days from the call of the special election. A person appointed
16 or elected to fill a vacancy holds office for the unexpired term of
17 the former incumbent.

18 (c) Notwithstanding subdivision (b) and Section 34902, a city
19 may enact an ordinance that does any of the following:

20 (1) Requires that a special election be called immediately to fill
21 every city council vacancy and the office of mayor designated
22 pursuant to Section 34902. The ordinance shall provide that the
23 special election shall be held on the next regularly established
24 election date not less than 114 days from the call of the special
25 election.

26 (2) Requires that a special election be held to fill a city council
27 vacancy and the office of mayor designated pursuant to Section
28 34902 when petitions bearing a specified number of verified
29 signatures are filed. The ordinance shall provide that the special
30 election shall be held on the next regularly established election
31 date not less than 114 days from the filing of the petition. A
32 governing body that has enacted such an ordinance may also call
33 a special election pursuant to subdivision (b) without waiting for
34 the filing of a petition.

35 (3) Provides that a person appointed to fill a vacancy on the city
36 council holds office only until the date of a special election which
37 shall immediately be called to fill the remainder of the term. The
38 special election may be held on the date of the next regularly
39 established election or regularly scheduled municipal election to

1 be held throughout the city not less than 114 days from the call of
2 the special election.

3 (d) (1) Notwithstanding subdivision (b) and Section 34902, an
4 appointment shall not be made to fill a vacancy on a city council
5 if the appointment would result in a majority of the members
6 serving on the council having been appointed. The vacancy shall
7 be filled in the manner provided by this subdivision.

8 (2) The city council may call an election to fill the vacancy, to
9 be held on the next regularly established election date not less than
10 114 days after the call.

11 (3) If the city council does not call an election pursuant to
12 paragraph (2), the vacancy shall be filled at the next regularly
13 established election date.

14 (e) (1) If the city council of a city that elects city council
15 members by or from districts elects to fill a vacancy on the city
16 council by appointment as a result of a city council member
17 resigning from office, the resigning city council member may cast
18 a vote on the appointment if the resignation will go into effect
19 upon the appointment of a successor. A city council member shall
20 not cast a vote for a family member or any other person with whom
21 the city council member has a relationship that may create a
22 potential conflict of interest.

23 (2) If a city council member elects to cast a vote under this
24 subdivision, the city council member shall be prohibited from the
25 following actions for a period of two years after the appointment
26 of a successor:

27 (A) Advocating on any measure or issue coming before the city
28 council in which the city council member may have a personal
29 benefit.

30 (B) Entering into a contract of any kind with the city or a city
31 vendor.

32 (C) Accepting a position of employment with the city or a city
33 vendor.

34 (D) Applying for a permit that is subject to the approval of the
35 city council.

36 (3) This subdivision shall not apply to any city council member
37 who is resigning from the city council due to ~~an accusation~~ charges

- 1 of, or conviction for, corruption or criminal behavior, or who is
- 2 subject to a recall election.

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